

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal From Order No. 357 of 2001(Defective)
(Old No. 18/1995)(Defective)

New India Assurance Company
Limited, Haldwani Appellant

Versus

Smt. Pushpa Devi & others Respondents

Mr. R.B. Agarwal, learned counsel for the appellant.
Mr. Amit Bhatt, learned counsel for the respondents.

Hon'ble P.C. Verma, A.C.J.
Hon'ble P.C. Pant, J.

(Delivered by Hon'ble P.C. Pant, J.)

This is an appeal under Section 173 of the Motor vehicles Act, 1988 against the judgment and award dated 30.11.1994 passed by Shri P.D. Dha8ndial, the then learned IV Additional District Judge / Presiding Officer, Motor Accident Claims Tribunal, Nainital whereby in M.A.C. Case No. 175 of 1988 the Tribunal has awarded Rs. 1,20,000/- as compensation to the applicants.

2. Brief facts of the case giving rise to the present appeal are that on 10.01.1988, Kuchhwan Singh (deceased) was traveling from Haldwani to Almora in a bus bearing registration No. URN 9428. The driver of the bus was driving it rashly and negligently. When the bus reached near Khairana, the driver lost control of the bus and it fell in a gorge and caught fire. Shri Kuchhwan Singh (Deceased) and many other passengers got burn injuries and died. The deceased was aged 24 years. The deceased was a farmer and he also used to run dairy business.

Smt. Pushpa Devi, claimant No. 1 is widow of the deceased while Laxman Singh (claimant No. 2), Smt. Kharti Devi (Claimant No. 3) are father and mother of the deceased and Bhim Singh (claimant No. 4) is sons of the deceased. Claimant Nos. 4 was minor at the time of alleged accident. Opposite party No. 1, Kanta Devi was owner of the vehicle and new India Assurance Company Ltd. (present appellant) was the company with whom the vehicle was ensured. Opposite party No. 4 in the petition was the driver of the vehicle in question.

3. In the written statement before the trial Court, the owner of the vehicle has admitted the accident and death of the passengers including that of Kuchhwan Singh, However, the opposite parties including the owner have denied allegations that the bus was being driven rashly and negligently by the driver of the bus. Opposite party No. 2 (present appellant) has taken a further plea that the owner of the bus has no permit to ply the vehicle between Haldwani and Almora.

4. Learned Presiding officer of the trial after examining the pleas, framed following issues:

- i) Whether, the bus was being driven at the relevant time for and on behalf of opposite party No. 3? If so, its effect?
- ii) whether, in the accident in question on account of which Kuchhwan Singh died was due to rash and negligent driving of the driver of the bus?
- iii) Whether, on the date of the alleged accident O.P. No. 1 was not the owner of the vehicle and had no control over the vehicle and the driver? If so, its effect?
- iv) Whether, at the relevant time bus was being driven without valid permit for the route in question? If so, its effect?

- v) Which of the opposite parties is liable to pay compensation to the claimants?
- vi) To what amount of compensation, if any, the claimants are entitled ?
- vii) Whether, the bus was owned by opposite party No. 4 on the date of accident?

5. After recording the evidence of the parties and hearing them, learned presiding officer of the tribunal has found that the accident in question has taken place due to the rash and negligent driving on part of the driver, who was employed by opposite party No. 1 as owner of the bus. The Tribunal further found that since the bus was plying under Kumaon Motor Owners Union Ltd., hence it had the route permit. The tribunal also came to the conclusion that the claimants are entitled to compensation to the tune of Rs. 1,20,000/- and the New India Assurance company Ltd. with whom the vehicle was ensured was liable to pay it. Accordingly, the Award was passed for the sum along with 10% interest on the amount of compensation. Aggrieved with the Award, New India Assurance company Ltd. has preferred this appeal.

6. We have heard learned counsel for the parties and perused the record. Considering the evidence on record since deceased was agriculturist it is evident that an amount of Rs. 1.000/- per month was rightly assessed as loss on account of death of Kuchhwan Singh to his family. Considering the number of family members of the deceased, it can safely be presumed that out of this amount the deceased would have been spending Rs. 600/- on his family. So the amount of Rs. 7,200/- was reasonable on account of annual loss to the family. The age of deceased was 24 years. As such

Multiplier of 15 is reasonable. The amount of compensation thus arrived is as under:

$$600 \times 12 \times 15 = \text{Rs. } 1,08,000/-$$

7. Keeping in view that the wife lost her husband at a young age of 20 and their son lost the love and protection of his father at a tender age of one and a half years and the parents of the deceased lost their son at the age of 24, an amount of Rs. 12,000/- on account of mental pain and sufferings will be reasonable in this case. Thus, total amount of compensation comes out to Rs. 1,20,000/-, which cannot be said to be excessive in the facts and circumstances of the present case which is to be paid by the present appellant i.e. new India Assurance Company Ltd.

8. In view of the aforesaid facts and circumstances of the case, we find no fault in the order passed by the Claims Tribunal while awarding compensation to the extent of Rs. 1,20,000/- along with 10% interest per annum from the date of petition till the date of actual payment. Therefore, the appeal is devoid of merits and is, hereby dismissed. No order as to costs. Amount deposited by the appellant in this Court, if any, shall be transmitted to the M.A.C.T. concerned for its disbursement amongst the claimants of the deceased.

(P.C. Pant, J.) (P.C.Verma, A.C.J.)

Dt: 07. 07. 2004

HN